

# JAMAICA 2021 HUMAN RIGHTS REPORT

## EXECUTIVE SUMMARY

Jamaica is a constitutional parliamentary democracy. The Jamaica Labour Party, led by Prime Minister Andrew Michael Holness, held 48 of the 63 seats in the House of Representatives. International and local election observers deemed the elections on September 3, 2020, to be transparent, free, fair, and generally peaceful.

The Ministry of National Security is the ministerial home of the Jamaica Defense Force and directs policy of the security forces. The prime minister has authority over the Jamaican Defense Board and as chairman of the board has responsibility for defense-related matters including command, discipline, and administration. He is the de facto minister of defense. The Jamaica Constabulary Force is the country's police force. It has primary responsibility for internal security and has units for community policing, special response, intelligence gathering, and internal affairs. When the prime minister and Parliament declare a state of emergency, the Jamaica Defense Force has arrest authority and operational partnership alongside the Jamaica Constabulary Force. The Passport, Immigration, and Citizenship Agency has responsibility for migration. Civilian authorities maintained effective control over the security forces. There were credible reports that members of the security forces committed some abuses.

Significant human rights issues included credible reports of: unlawful and arbitrary killings by government security forces; harsh and life-threatening conditions in prisons and detention facilities; arbitrary arrest and detention; significant government corruption; lack of investigation of and accountability for gender-based violence; and the existence of a law criminalizing consensual same-sex sexual conduct between adults, although the government did not enforce the law during the year.

The government took some steps to investigate and prosecute officials who committed human rights abuses. Nonetheless, there were credible reports that some officials alleged to have committed human rights abuses were not subject to

full and swift accountability. The government did not effectively implement the law on corruption. There were numerous credible allegations of government corruption, and there were officials who sometimes engaged in corrupt practices with impunity.

## **Section 1. Respect for the Integrity of the Person**

### **a. Arbitrary Deprivation of Life and Other Unlawful or Politically Motivated Killings**

There were numerous reports during the year that government security forces committed arbitrary and unlawful killings, and there were hundreds of complaints of abuse and wrongful harm. The Jamaica Constabulary Force was cited in most of the reports, in its roles both as an independent agency and as part of joint military-police activity. There were several reported incidents involving the Jamaica Defense Force. Overall, the total number of fatalities involving security forces, justifiable or otherwise, increased, with 123 reports as of December 9. Police fatally shot a taxi driver in September after he failed to obey an order to stop. A passenger was wounded in the same event, which drew significant community protests. In 2020 the government reported 115 fatal shooting incidents and 92 nonfatal shooting incidents involving security forces, an increase from the number of incidents reported in 2019.

Charges against members of the security forces took years to process, primarily due to investigatory backlogs, trial delays, and appellate measures. While the country continued to reduce the court case backlog, the COVID-19 global pandemic stymied progress in some courts. Numerous cases awaited prosecution.

### **b. Disappearance**

There were no reports of disappearances by or on behalf of government authorities.

### **c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment**

The constitution prohibits such practices, although there is no definition of torture

in the law. There were allegations of cruel, inhuman, and degrading treatment or punishment of individuals in police custody and in correctional facilities. The Independent Commission of Investigations (INDECOM) investigated reports of alleged abuse committed by police and prison officials. Most reports to INDECOM described intimidation, excessive physical force in restraint, and restricted access to medical treatment. Representatives of nongovernmental organizations (NGOs) expressed concern regarding underreporting by victims, particularly among the vulnerable or persons with mental disabilities. Rapes were occasionally perpetrated by security forces.

INDECOM investigated actions by members of the security forces and other state agents that resulted in death, injury, or the abuse of civil rights. As of December, INDECOM was investigating 1,002 complaints received during the year of the abuse of power by police, including wrongful deaths, assaults, and mistreatment. INDECOM forwarded its recommendations to the Office of the Director of Public Prosecutions, which determined whether police should be charged. INDECOM remained one of the few external and independent oversight commissions that monitored security forces. INDECOM reported a backlog in cases due to significant delays in obtaining DNA, ballistics, and chemistry reports from other government agencies.

Cases against security forces were infrequently recommended for criminal trial and often saw substantial procedural delays. Many cases did not go to trial due to continued delays in court and plea hearings.

There were reports of unlawful arrests for which officers were not punished or disciplined. The government had procedures for investigating complaints of unlawful behavior by security forces, including investigations by INDECOM and the Jamaica Constabulary Force's Inspectorate and Professional Standards Oversight Bureau, but the government did not always use these procedures. Citizens enjoyed effective legal representation in criminal proceedings and successfully challenged unlawful arrests and detentions within the court system. Civil society organizations such as Jamaicans for Justice conducted training for police recruits in human rights protections.

## **Prison and Detention Center Conditions**

Conditions in prisons and detention facilities were harsh and life threatening due to gross overcrowding, physical abuse, limited food, poor sanitary conditions, inadequate medical care, and poor administration. Prisoners with mental disabilities and children in juvenile correctional facilities represented the most vulnerable populations facing harsh conditions.

**Physical Conditions:** Correctional facilities were significantly overcrowded. At times cells in the maximum-security facility at Tower Street held twice the intended capacity. Cells were dark and dirty, with poor bathroom and toilet facilities and limited ventilation.

Prisoners sometimes did not receive required medication, including medication for HIV, according to UNAIDS. The HIV prevalence rate among incarcerated populations (more than 6.9 percent) was reportedly as much as three times that of the general population. Two full-time psychiatrists and four part-time psychiatrists, an increase from 2020, cared for at least 262 inmates diagnosed with mental disabilities in 11 different facilities.

**Administration:** Independent authorities investigated allegations of abuse and inhuman conditions. Investigations were infrequent, and the number of official complaints likely underrepresented the scope of the problems, according to a human rights NGO.

**Independent Monitoring:** Justices of the peace and representatives from the Police Civilian Oversight Authority (PCOA) visited correctional centers and detention facilities (lockups) regularly. Justices of the peace reported their findings to the Ministry of Justice, while the PCOA submitted reports to the Ministry of National Security. Both entities made recommendations to improve overall conditions. Citizen groups and NGOs stated the ministries rarely acted on the recommendations.

INDECOM investigated actions by staff members of the correctional facilities and other state agents that resulted in death, injury, or the abuse of civil rights. INDECOM's legal mandate requires it to investigate all prisoner deaths that occur at a correctional facility, including deaths reported as a result of natural causes.

#### **d. Arbitrary Arrest or Detention**

The constitution prohibits arbitrary arrest and detention but allows arrest if there is “reasonable suspicion of [a person] having committed or ... about to commit a criminal offense.” The law provides for the right of any person to challenge in court the lawfulness of his or her arrest or detention, and the government generally observed these requirements. Abuses arose, however, because police regularly ignored the “reasonable suspicion” requirement, arraignment procedures were very slow, and some communities operated as zones of special operations (ZOSOs) for most of the year.

The country suffered from high levels of homicide, crime, and violence. The declaration of a state of emergency (SOE) grants the police and military the ability to search, seize, and arrest citizens without a warrant, although no SOEs were declared during the year. The prime minister may declare an SOE for 14 days or fewer; extensions require parliamentary approval. Additionally, the government may identify ZOSOs, which confer to security forces some additional detention authorities, such as are found in SOEs. During the year the prime minister declared or extended five ZOSOs, which the government viewed as necessary to reduce crime and violence. High detention rates were a concern, and arbitrary and lengthy detentions took place in ZOSOs. Very few of these detentions resulted in charges.

#### **Arrest Procedures and Treatment of Detainees**

Police may arrest without a warrant when a felony, treason, or breach of the peace is committed or attempted in the officer’s presence. Following an arrest, the officer is required to inform the suspect of the offense(s) for which the individual was arrested.

An officer may execute a warrant that is lawfully issued by a judge or justice of the peace without being in possession of the warrant. The officer must produce the warrant as soon as practical after the arrest if the suspect requests it. The decision to charge or release must be made within 48 hours, although a judge or justice of the peace may extend the period of custody.

Security forces did not always follow these official procedures. According to

government officials and civil society, public perception was that police could make arrests regardless of judicial authorization.

There were reports of arrests and prolonged periods of detention in which police did not inform the suspect of the official charges. There were multiple reports that detainees did not have access to legal counsel and that apprehended suspects could not notify family members. Every person charged with an offense is entitled to consideration for bail, although those charged with murder, treason, or other crimes punishable by imprisonment may be denied bail on “substantial grounds” that they would fail to surrender to authorities or would commit another offense while on bail. The procedure lent itself to low-level corruption in which police would accept bribes to forgo an arrest.

**Arbitrary Arrest:** Most cases of arbitrary detention were in the parishes (counties) of St. James and St. Catherine. The government declared ZOSOs and deployed the military to these areas to support police. Under these orders, security forces carried out wide-ranging campaigns of detention and incarceration in attempts to contain violence. There were few official investigations or prosecutions of security force members involved in arbitrary arrests.

**Pretrial Detention:** Lockups are intended for short-term detentions of 48 hours or less, but often the government held suspects in these facilities without charge or awaiting trial for much longer periods. A lack of administrative follow-through after an arrest created situations where persons were incarcerated without any accompanying paperwork. In some cases – days, weeks, months, or years later – authorities could not ascertain the reason for the arrest.

### **e. Denial of Fair Public Trial**

The constitution provides for an independent judiciary, and the government generally respected judicial independence and impartiality. A backlog of criminal cases in most courts, however, led to the denial of a fair public trial for thousands of citizens. Criminal proceedings sometimes extended for years. Cases were delayed primarily due to incomplete files and parties, witnesses, attorneys, or investigating officers failing to appear.

The criminal courts decreased the court case backlog, especially at the parish court

level. The case clearance rate for the second quarter of the year was that for every 100 cases that entered the courts, 111 were cleared.

Due to the COVID-19 global pandemic, the courts were unable to hold jury trials, contributing to the low murder conviction rate of 8.3 percent in the first quarter of the year. During the year courts continued their efforts to address the court case backlog by using virtual hearings, a new electronic case management system, and promoting alternative dispute resolution methods.

### **Trial Procedures**

The constitution provides for the right to a fair and public trial, and an independent judiciary generally enforced this right. The law provides defendants a presumption of innocence. Defendants have the right to be informed of the charges against them and the right to a trial within a reasonable time. Defendants have the right to be present at their trial and the right to counsel. Legal aid attorneys (public defenders) are available to indigents, except to those charged with money laundering, drug manufacturing, drug trafficking, possession of large quantities of drugs, or any minor offense not punishable with imprisonment. Limited legal aid attorneys (duty counsels) are also available to everyone, regardless of charges, from the time when persons are first taken into custody up to their first appearance in court. Defendants have ample time and facilities to prepare their defense. The government provides a free interpreter as necessary. Defendants have the right to confront witnesses. Defendants may not be compelled to testify or confess guilt. They have the right to appeal. The Supreme Court tries serious criminal offenses, which include all murder cases.

### **Political Prisoners and Detainees**

There were no reports of political prisoners or detainees.

### **Civil Judicial Procedures and Remedies**

There is an independent and impartial civil judiciary process. Complainants may bring human rights abuse cases to the courts for civil remediation, but awards were difficult to collect. The government is required to undertake pretrial negotiations or mediation to settle out of court. Plea bargains offered by the prosecution,

however, were rarely accepted by defendants.

## **f. Arbitrary or Unlawful Interference with Privacy, Family, Home, or Correspondence**

Although the constitution prohibits arbitrary or unlawful interference, the law gives broad powers of search and seizure to security personnel. The law allows warrantless searches of a person, vehicle, ship, or boat if a police officer has a reasonable suspicion of criminal activity. On occasion police were accused of conducting searches without warrants or reasonable suspicion.

In the areas with ZOSOs and SOEs, government security forces took biometrics from temporarily detained persons. The Office of the Public Defender and civil society organizations challenged this practice, arguing that retaining the information and failing to delete it after police released the detained person effectively criminalized persons who subsequently were not charged. Security forces detained wide swaths of the population in ZOSOs and SOEs under broad arrest authorities.

## **Section 2. Respect for Civil Liberties**

### **a. Freedom of Expression, Including for Members of the Press and Other Media**

The constitution provides for freedom of expression, including for members of the press and other media, and the government generally respected this right. An independent media, generally effective judicial protection, and a functioning democratic political system combined to promote freedom of expression, including for members of the media.

**Freedom of Expression:** Media reported in July that police allegedly took St. Ann parish resident Shaquille Higgins from his home without a search warrant on larceny charges after he criticized the government-imposed curfew and insulted the prime minister on social media. Police officials subsequently apologized in the media for the arrest. Higgins later filed a lawsuit against the government.

## **Internet Freedom**

The government did not restrict or disrupt access to the internet or censor online content, and there were no credible reports that the government monitored private online communications without appropriate legal authority.

## **Academic Freedom and Cultural Events**

There were no government restrictions on academic freedom.

The Broadcasting Commission barred certain lyrics and music videos, including songs referring to violent sex; violence against women, children, and other vulnerable persons; or questions of race. Such lyrics were expunged prior to broadcast.

## **b. Freedoms of Peaceful Assembly and Association**

The constitution provides for the freedoms of peaceful assembly and association, and the government generally respected these rights.

## **c. Freedom of Religion**

See the Department of State's *International Religious Freedom Report* at <https://www.state.gov/religiousfreedomreport/>.

## **d. Freedom of Movement and the Right to Leave the Country**

The law provides for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights.

## **e. Status and Treatment of Internally Displaced Persons**

Not applicable.

## **f. Protection of Refugees**

The government cooperated with the Office of the UN High Commissioner for Refugees and other humanitarian organizations in providing protection and assistance to refugees, returning refugees, asylum seekers, stateless persons, and

other persons of concern.

**Access to Asylum:** The law does not provide for the granting of asylum or refugee status, and the government has not established a system for providing protection to refugees. The government handles each potential asylum seeker administratively on an individual basis. Through registration the government may grant Jamaican citizenship to persons with citizenship in a Commonwealth country.

### **Section 3. Freedom to Participate in the Political Process**

The law provides citizens the ability to choose their government in free and fair periodic elections held by secret ballot and based on universal and equal suffrage.

#### **Elections and Political Participation**

**Recent Elections:** In national elections in September 2020, the Jamaica Labour Party won 48 of the 63 seats in the House of Representatives. Observers judged the elections to be transparent, free, fair, and generally peaceful.

**Participation of Women and Members of Minority Groups:** No laws limit participation of women or members of minority groups in the political process, and they did participate. In national elections in September 2020, 18 women (29 percent of total seats) were elected to the House of Representatives out of 30 female candidates, a 50 percent increase from the 12 women elected during the 2016 general election.

### **Section 4. Corruption and Lack of Transparency in Government**

The law provides criminal penalties for corruption by officials, but the government generally did not implement the law effectively. There were numerous reports of government corruption during the year, and corruption was a significant problem of public concern. Media and civil society organizations criticized the government for being slow and at times reluctant to prosecute corruption cases.

**Corruption:** In October the auditor general called for a probe into the Ministry of

Education's transfer of 124 million Jamaican dollars (\$800,000) to a private entity when the ministry could not account for the intended use of the funds. The acting permanent secretary of the ministry was placed on administrative leave but was not charged.

## **Section 5. Governmental Posture Towards International and Nongovernmental Investigation of Alleged Abuses of Human Rights**

Domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials were cooperative and responsive to their views.

**Government Human Rights Bodies:** The Office of the Public Defender investigates abuses of constitutional rights and engages with claimants in a process to seek remediation from the government. The public defender is not authorized to appear in court but may retain attorneys to represent clients on the office's behalf. The office may not investigate cases affecting national defense or actions investigable by a court of law. Parliament may ignore the findings of the Office of the Public Defender or decline to act on recommended actions. This limited the overall efficacy of the public defender.

## **Section 6. Discrimination and Societal Abuses**

### **Women**

**Rape and Domestic Violence:** The rape of a woman is legally defined only as forced penile penetration of the vagina by a man; it is illegal and carries a penalty of 15 years' to life imprisonment. Anal penetration of a woman or man is not legally defined as rape and may be punished by a maximum of 10 years in prison. This strict definition created wide discrepancies between cases that otherwise had similar elements of rape. The government enforced the law with respect to the vaginal rape of a woman but was less effective in cases involving male victims.

Married women do not have the same rights and protections as single women. The law criminalizes spousal rape only when one of the following criteria is met: the

act occurs after legal separation or court proceedings to dissolve the marriage; the husband is under a court order not to molest or cohabit with his wife; or the husband knows he has a sexually transmitted disease. By law marriage always implies sexual consent between husband and wife.

Advocacy groups contended that rape was significantly underreported because victims had little faith in the judicial system and were unwilling to endure lengthy criminal proceedings. Based on estimates from the Statistical Institute of Jamaica and the UN Entity for Gender Equality and the Empowerment of Women, more than 23 percent of women ages 15 to 49 experienced sexual violence in their lifetime.

The government operated a Victim Support Unit (VSU) to provide direct support to all crime victims, including crisis intervention, counselling, and legal advocacy. The VSU managed 13 independent parish offices throughout the country, each with its own hotline and staff of trained providers. While observers stated that the VSU had well-qualified and trained staff, it lacked sufficient resources to effectively meet the needs of all crime victims. The VSU coordinated with a network of NGOs capable of providing services such as resiliency counseling and operating shelters, although overall NGO capacity was limited. Few government services sensitive to the impact of trauma on their constituents were available.

The Child Protection and Family Services Agency provided similar services for children, although the staffs of both the VSU and the child protection agency were too few and insufficiently trained to provide comprehensive care to the populations they served. There were insufficient shelters in the capital area for women and children, and even fewer were available outside the capital area, or for males. Police and first responders had limited training regarding services available to crime victims.

**Sexual Harassment:** The government approved the long-debated Sexual Harassment Act in November. This new law creates a legal definition of sexual harassment in private workplaces and public institutions. The law provides legal recourse for victims, including a Sexual Harassment Tribunal, which can receive complaints up to six years after an act of sexual harassment and is empowered to impose fines. According to the Caribbean Policy Research Institute, a regional

think tank, one in four women reported being sexually harassed during their lifetime.

**Reproductive Rights:** There were no reports of coerced abortion or involuntary sterilization on the part of government authorities.

Access to contraception and skilled health attendance during pregnancy and childbirth were available, although limited in impoverished or rural communities. Social and religious pressure against contraception created significant barriers to access for women.

Women had access to emergency health care, including for the management of consequences arising from abortions. The standard of care varied widely, however, especially in rural communities. The government provided access to sexual and reproductive health services for sexual violence survivors.

**Discrimination:** Although the law provides the same legal status and rights for women as for men, including equal pay for equal work, the government did not enforce the law effectively, and women encountered discrimination in the workplace. Women often earned less than men while performing the same work. Women were restricted from working in some factory jobs. Domestic workers were particularly vulnerable to workplace discrimination and sexual harassment.

## **Systemic Racial or Ethnic Violence and Discrimination**

The constitution provides for the right to freedom from discrimination based on race and skin color, but there are no laws or regulations prohibiting discrimination on the grounds of ethnicity.

There were few reports of racial discrimination. While the population was 92 percent Black, some media sources reported incidents of colorism (favoring lighter-skinned persons within an ethnic group) by employers or against patrons in upper-class restaurants. The government did not investigate these incidents.

While the public-school curriculum includes robust discussions of race, there were no government programs designed specifically to counter racial or ethnic biases.

## Children

**Birth Registration:** Every person born in the country after independence in 1962 is entitled to citizenship. Children outside the country born to or adopted by one or both Jamaican parents, as well as persons married to Jamaican spouses, are entitled to citizenship.

**Child Abuse:** The law bans child abuse and mistreatment in all its forms, including neglect. The penalties are a large fine, a prison sentence with hard labor for a term not exceeding five years, or both. The National Children's Registry received 9,229 reports of child abuse in 2020, a decrease from 2019. The law bans corporal punishment in all children's homes and places of safety (government-run or regulated private institutions).

The law requires anyone who knows of or suspects child abuse in any form to make a report to the registry office. There is a potential penalty of a large fine, six months' imprisonment, or both for failure to do so.

Corporal punishment and other forms of child abuse were prevalent. Based on 2018 estimates, the NGO Jamaicans for Justice reported that 80 percent of children experienced psychological or physical violence administered as discipline, and a similar number witnessed a violent crime in their home. Physical punishment in schools remained commonplace.

Boys experienced disproportionately high levels of physical violence, including corporal punishment both at home and at school. A survey by the Planning Institute of Jamaica showed that boys were 2.7 times more likely than girls to experience malnutrition between birth and the age of five. Boys also experienced disproportionately poor education outcomes, with UNICEF reporting that 60 percent of adolescents not attending school were boys and that only 20 percent of tertiary education enrollees were boys.

**Child, Early, and Forced Marriage:** The legal minimum age for marriage is 18, but children may marry at 16 with parental consent.

**Sexual Exploitation of Children:** The law criminalizes the commercial sexual exploitation of children, which applies to the production, possession, importation,

exportation, and distribution of child pornography. The crime carries a maximum penalty of 20 years' imprisonment and a large fine. The law prohibits child sex trafficking and prescribes a penalty of up to 30 years' imprisonment, a fine, or both. There were continued reports of the commercial sexual exploitation of children and child sex trafficking.

The law criminalizes sexual relations between an adult and a child – male or female – younger than 16 and provides for penalties ranging from 15 years' to life imprisonment. The risk of sexual assault reportedly was three times higher for children than adults. Cases were widespread and varied.

Also see Department of State's *Trafficking in Persons Report* at <https://www.state.gov/trafficking-in-persons-report>.

**International Child Abductions:** The country is a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. See the Department of State's *Annual Report on International Parental Child Abduction* at <https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction/for-providers/legal-reports-and-data/reported-cases.html>.

## **Anti-Semitism**

Approximately 500 persons in the country practiced Judaism. There were no reports of anti-Semitic acts.

## **Trafficking in Persons**

See the Department of State's *Trafficking in Persons Report* at <https://www.state.gov/trafficking-in-persons-report>.

## **Persons with Disabilities**

The law prohibits discrimination against persons with disabilities, although it does not mandate accessibility standards. The law was not fully implemented. Persons with disabilities encountered difficulties accessing education, employment, health services, public buildings, communications, transportation, and other services due to the lack of accessible facilities. The government did not provide all information

in accessible formats.

There were reports of violence against persons with disabilities. In July a man was arrested for the rape of a girl with disabilities at a government-run care facility for children with special needs.

Insufficient resources were allocated for persons with disabilities. There were limitations in access to primary school education, although the constitution provides all children the right to primary education. There was also a lack of suitably trained teachers to care for and instruct students with disabilities. Postprimary and postsecondary educational services, vocational training, and life skills development opportunities were limited. Health care reportedly was at times difficult to access, especially for persons with hearing disabilities and persons with mental disabilities. Access problems were more pronounced in rural regions.

## **HIV and AIDS Social Stigma**

Civil society groups, international organizations, and government officials cited stigma and discrimination as factors contributing to low numbers of individuals being treated for HIV. The country's legal prohibition of sexual conduct between men disproportionately affected HIV treatment for subpopulations such as men who have sex with men and individuals who are lesbian, gay, bisexual, transgender, queer, or intersex (LGBTQI+), where HIV infection levels were higher than average. NGOs also expressed concern about the role of sexual abuse in the transmission of HIV to girls and young women; approximately 45 percent of adolescent mothers with HIV were sexually abused as children. Some individuals with HIV reported difficulty obtaining medical care, to the extent that some delayed seeking medical attention or traveled abroad to receive treatment.

The government collaborated with international programs to address HIV-related stigma and discrimination. Measures included training health-care providers on human rights and medical ethics; sensitizing lawmakers and law enforcement officials; reducing discrimination against women in the context of HIV; improving legal literacy; providing legal services; and monitoring and reforming laws, regulations, and policies relating to HIV.

The law prohibits HIV-related discrimination in the workplace and provides some

legal recourse to persons with HIV who experience discrimination. In rural areas or poor urban areas, there was less knowledge of the government services and programming available related to HIV.

## **Acts of Violence, Criminalization, and Other Abuses Based on Sexual Orientation and Gender Identity**

The law criminalizes consensual sexual conduct between men, with penalties of up to 10 years in prison with hard labor. Attempted sexual conduct between men is criminalized, with penalties up to seven years in prison. Physical intimacy, or the solicitation of such intimacy, between men, in public or private, is punishable by two years in prison under gross indecency laws. There is no comprehensive antidiscrimination legislation protecting the rights of LGBTQI+ persons.

The government generally only enforced the law that criminalizes same-sex sexual relations in cases of sexual assault and child molestation. The government does not provide information as to whether the government prosecuted consensual sexual conduct between men. The legal definitions of rape and buggery (anal sex) create a phenomenon where, under certain circumstances, segments of the population have unequal legal protection from sexual assault. For example, a man who sexually assaults a woman through penile penetration of the vagina is punishable by 15 years to life in prison. This same act committed through anal penetration of a woman, child, or man is punishable by only up to 10 years in prison. Local human rights advocates contended this was unequal protection under the law.

The law does not extend antidiscrimination protections based on sexual orientation, gender identity, gender expression, or sex characteristics. The Inter-American Commission on Human Rights stated the law legitimizes violence towards LGBTQI+ persons.

The NGO J-FLAG (formerly Jamaica Forum for Lesbians, All-Sexuals, and Gays) reported that it received a similar number of cases of discrimination based on sex, sexual orientation, and gender identity against LGBTQI+ individuals during the year, compared with previous years. Many of the cases reported during the year occurred in prior years. Underreporting was a problem, since many of those who

made reports were reluctant to go to police due to fear of discrimination or police inaction. A local NGO reported that officials within the government, including police, had improved their response to LGBTQI+ rights violations.

## **Section 7. Worker Rights**

### **a. Freedom of Association and the Right to Collective Bargaining**

The law provides for the right of workers to form or join independent unions and to bargain collectively. The law does not provide for the right to strike, although the constitution provides for the freedoms of peaceful assembly and association. The law prohibits antiunion discrimination and provides for the Industrial Disputes Tribunal (IDT) to reinstate a worker for unjustified dismissal. The law makes it a criminal offense to prevent or deter a worker from exercising the right to participate in trade union activities or to dismiss, penalize, or otherwise discriminate against a worker for exercising these rights.

Aspects of the law inhibit the ability of some workers to organize. The government defines the following 10 categories of services as essential: water, electricity, health, hospital, sanitation, transportation, firefighting, corrections, overseas telecommunication, and telephone services. Before workers in these categories may legally strike, they must take their dispute to the Ministry of Labor and Social Security and attempt to settle the dispute through negotiation.

In December an International Labor Organization (ILO) representative confirmed that the ILO continued to raise concerns that the country's definition of essential services was too broad. The ILO reported the issue remained unresolved by the government. The government prohibits unionizing in export-processing zones, which are industrial areas with special tax and trade incentives to attract foreign investment. The ILO expressed concern that penalties may be imposed on workers for their membership and participation in an unregistered trade union. The ILO also expressed concern that the government may carry out inspections and request information about trade union finances at any time.

The law mandates that in the case of doubt or dispute as to whether workers may exercise bargaining rights, the labor and social security minister must conduct a

secret ballot requiring that a majority of workers vote. If two or more unions each represent less than 30 percent of workers eligible to vote, the minister grants joint bargaining rights to each of those unions.

The minister of labor and social security may apply through the Supreme Court to curtail an industrial action such as a strike or lockout when the minister determines the action may be harmful to national security or the national economy or may have the potential to endanger the lives of a substantial number of persons. The minister refers such cases to compulsory arbitration. The IDT hears cases when management and labor fail to reach agreement, including those involving nonunionized workers.

The government enforced the law in most cases, but burdensome legal procedures allowed firms and other large employers to appeal and delay resolution of their cases for years. Trial delays due to the government's COVID-19 measures further deferred action on some cases. While cases should by law be resolved within 21 days, the IDT took several months to decide most cases. Parties could apply for judicial review by the Supreme Court. Penalties were commensurate with similar violations, but large firms allegedly used their influence on the court and government to shape decisions to suit their interests.

The government generally respected freedom of association and the right to collective bargaining in the formal sector, except in export-processing zones. Worker organizations operated without interference, although the government maintained the right to monitor their activities. While employers generally respected the law prohibiting antiunion discrimination, some labor unions reported that private-sector workers feared management retaliation against unionization. For example, it was not uncommon for private-sector employers to dismiss union workers and rehire them as contractors with fewer worker protections.

## **b. Prohibition of Forced or Compulsory Labor**

The law criminalizes all forms of forced or compulsory labor as well as trafficking in persons. The National Task Force Against Trafficking in Persons continued its outreach to sensitize citizens to forced labor and other trafficking-in-persons violations. The task force also facilitated sensitization training programs for all

levels of government, from police, labor officers, and health-care officials to prosecutors. There were no arrests or convictions made for labor trafficking between April 2020 and March 2021.

The government did not effectively enforce the laws on forced or compulsory labor or trafficking in persons. Most violators were not held criminally accountable. The country continued to be a source and destination for persons subjected to forced labor, including in domestic work, begging, and the informal sector. Children were subjected to forced labor in domestic work, and gang members subjected boys to forced criminal activity (see section 7.c.).

Also see the Department of State's *Trafficking in Persons Report* at <https://www.state.gov/trafficking-in-persons-report>.

### **c. Prohibition of Child Labor and Minimum Age for Employment**

The law prohibits the worst forms of child labor. The law prohibits the exploitation of children in prostitution, the recruitment of children into criminal organizations, and the use of a child for “purposes contrary to decency or morality,” but it does not further define these terms. The law includes occupational safety and health restrictions for children and prohibits night work between 10 p.m. and 5 a.m.

The minimum age for general employment is 15, with a strict prohibition on employing children younger than 13. The law permits children from ages 13 to 15 to engage in “light work.” While the Ministry of Labor and Social Security does not have an official definition for light work, it maintained a list of occupations acceptable for children ages 13 to 15. The government does not have a list of types of hazardous work prohibited for children. Those who legally hire children are not required to keep any records.

The government did not effectively enforce child labor laws. Most penalties were criminal and commensurate with those for similar crimes, but penalties for sex trafficking that allowed for a fine in lieu of imprisonment were not commensurate with similar crimes. Government surveys estimated that 38,000 children ages five to 17 years were engaged in child labor, mostly in the informal sector.

Government agencies did not inspect the informal sector, limiting the government's ability to enforce child labor laws. Children worked in farming, fishing, and in public markets. Children also worked as domestic helpers in homes or in street work such as peddling goods, services, begging, and garbage scavenging. Some children were subjected to forced labor in these sectors. The government's labor inspectorate conducted scheduled as well as unannounced inspections within the formal and informal sectors. These inspections were conducted across all geographical areas and all sectors. The government's social workers are authorized to access private homes. The Youth Activity Survey revealed that 5.8 percent of children engaged in child labor. Four percent of all children were engaged in hazardous work.

Children were subjected to commercial sexual exploitation. Girls, sometimes coerced by family members, were subjected to sex trafficking by men who provided monetary or material payment to the girls or their families in exchange for sex acts. Local observers reported this form of child sex trafficking may be widespread in some communities. Violent criminal gangs used children for forced begging; as lookouts, armed gunmen, and couriers of drugs and weapons; and for lottery scams.

The law prohibits the recruitment of adults and children by nonstate armed groups, with a maximum penalty of 20 years' imprisonment for conviction.

Also see the Department of Labor's *Findings on the Worst Forms of Child Labor* at <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/findings>.

#### **d. Discrimination with Respect to Employment and Occupation**

The constitution provides for the right to freedom from discrimination based on gender, race, place of origin, social class, skin color, religion, and political opinion. The law and regulations do not prohibit discrimination on the grounds of ethnicity, nationality, sexual orientation, or gender identity. Ministry of Labor and Social Security policy prohibits discrimination based on HIV status. There were limited numbers of cases filed for discrimination in employment or occupation during the year, but underreporting was likely due to strong stigma in the workplace against older women, persons with disabilities, members of the LGBTIQI+ community, and

persons with HIV or AIDS. Those persons subject to workplace discrimination had little confidence that effective legal recourse was available to them. Although the law requires equal pay for male and female employees, the law was not enforced. Salaries for women lagged behind salaries for men even in the same jobs, and women were concentrated in lower-paying occupations. Persons with disabilities often lacked access to the workplace. There is no law specifically mandating equal pay for equal work for persons with disabilities.

### **e. Acceptable Conditions of Work**

**Wage and Hour Laws:** The minimum wage was above the nationally estimated poverty line. Most workers received more than the legal minimum wage, while some minimum-wage earners held two or more jobs.

The law provides for a standard 40-hour workweek and mandates at least one day of rest per week. Employers are required to compensate work in excess of 40 hours per week at overtime rates, a provision most employers respected. The law provides for paid annual holidays. The government did not universally apply the law that restricts workdays to 12 hours or less.

**Occupational Safety and Health:** The Occupational Safety and Health (OSH) Department enforced industrial health and safety standards under ILO guidelines as appropriate for each industry. The department conducted inspections, investigated accidents, warned violators, and gave them a period in which to correct violations. The department took violators to court if they did not correct violations within given time frames. The law stipulates penalties and fines, and the minister of labor and social security has the authority to increase any monetary penalty.

The government did not effectively enforce the law. Insufficient staffing in the Ministry of Labor and Social Security, Ministry of Finance and Public Service, and Ministry of National Security contributed to difficulties in enforcing workplace regulations. The number of inspectors was insufficient to enforce compliance, and the inspections took place only in the formal sector.

Legal fines or imprisonment for workplace health and safety violations were not commensurate with similar crimes. The Ministry of Labor and Social Security

gained compliance in the vast majority of cases by threatening legal action. The ability of defendants to repeatedly appeal a case dulled the effectiveness of penalties. The law has no provisions that explicitly give workers the ability to remove themselves from hazardous conditions without jeopardy to employment, although the IDT may reinstate workers who were unfairly dismissed.

**Informal Economy:** Local think tanks estimated the informal economy generated more than 40 percent of GDP. Most violations pertaining to acceptable conditions of work occurred in the informal sector. OSH Department inspections referred cases of informal work to the Ministry of Labor for further action when discovered.